

**Before the
Federal Communications Commission
Washington, D. C. 20554**

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| In the Matter of |) | |
| |) | |
| Implementation of Section 309(j) of the |) | MM Docket No. 97-234 |
| Communications Act - - Competitive Bidding |) | |
| for Commercial Broadcast and Instructional |) | |
| Television Fixed Service Licenses |) | |
| |) | |
| Reexamination of the Policy Statement |) | GC Docket No. 92-52 |
| on Comparative Broadcast Hearings |) | |
| |) | |
| Proposals to Reform the Commission's |) | GEN Docket No. 90-264 |
| Comparative Hearing Process to Expedite |) | |
| the Resolution of Cases |) | |
| |) | |
| TO: The Full Commission |) | |

PETITION FOR PARTIAL RECONSIDERATION

Birach Broadcasting Corporation ("Birach"), by its attorney, hereby respectfully requests the full Commission to partially reconsider its First Report and Order in the above proceeding to the extent necessary to permit the acceptance for filing of Birach's pending application (File No. BMP-980527____) for a construction permit to change the facilities of AM Broadcast Station WNWI, Oak Lawn, Illinois, from daytime-only to unlimited time. In support thereof, it is alleged:

1. Birach is the licensee of AM Broadcast Station WNWI, Oak Lawn, Illinois. On

May 27, 1998, Birach tendered an application for a construction permit to change the facilities of Station WNWI from daytime-only to unlimited time, continuing operation on the station's assigned frequency of 1080 kHz. Because Station WNWI is a daytime station (Class D), operating on a regional channel (Class B), the application constitutes a request to change the class of station from Class D to Class B.

2. At the time the application was tendered, the Commission had imposed a freeze on all applications for major changes in the facilities of AM, FM and TV broadcast stations. On May 27, 1998, Birach filed a Petition for Waiver of Freeze and Acceptance of Application, pointing out, inter alia, that the Commission has received very few applications to add nighttime service at AM stations and that, accordingly, a waiver of the freeze would not open the "floodgates" to a torrent of applications.

3. The freeze was originally imposed to conserve valuable spectrum while the Commission converted its comparative procedures from procedures based on comparative hearings to procedures based upon government auctions, pursuant to the mandate of Congress, set forth in the Balanced Budget Act of 1997. Birach had expected that once the Commission adopted auction rules, the freeze would be lifted. However, on August 18, 1998, the Commission issued a First Report and Order in the proceeding, which does not explicitly lift the freeze. Instead, the Commission adopted new rules, which provide for a "window system" for the processing of applications for major changes in the facilities of AM broadcast stations. Section 73.3571(a)(1) of the new rules provides as follows:

"In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any increase in power,

except where accompanied by a complimentary reduction of antenna efficiency which leads to the same amount, or less, radiation in all directions (in the horizontal and vertical planes when skywave propagation is involved, and in the horizontal plane only for daytime considerations), relative to the presently authorized radiation levels, or any change in frequency, hours of operation, or community of license. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed."

4. Thus, Section 73.3571(a)(1) of the rules defines any change in hours of operation as a "major change". Section 73.3571(l)(i) provides that major modification applications will only be accepted during window periods, specified by the Commission. It is unclear when the Commission expects to issue any AM "windows" but, given the likelihood that the new rules will be challenged through petitions for reconsideration and appeals to the courts, it is fair to assume that many months or years will go by before the first AM window is opened.

5. At footnote 20 of its First Report and Order, the Commission comments it is streamlining its radio technical rules to alter the definitions of "major" and "minor" modifications in the AM service, so that fewer modifications in service are regarded as major. It cites the Notice of Proposed Rule Making and Order, 1998 Biennial Regulatory Review - - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, FCC 98-117 at paras. 48-50 (rel. June 15, 1998) (Technical Streamlining Notice). Unfortunately, a reference to paras. 48-50 of the Technical Streamlining Notice contains no reassurance that applications to change from daytime-only to unlimited time will be classified as minor changes. Paragraph 50 states that:

"Accordingly, we propose to expand the definition of minor change for the AM, NCE FM and FM translator services to conform to the commercial FM "minor change" definition. Thus, only applications to change community of license and to change to a non-mutually exclusive channel and class would be classified as "major" changes."

It is not clear to Birach whether this language contemplates that applications to change from daytime-only to unlimited time will be reclassified as "minor" or not.

6. Birach respectfully submits that the use of a window system in AM allotments is not in the public interest. AM has traditionally been allocated on a demand basis, i.e., applications could be filed at any time; the FCC would put those applications on a "cut off" list and provide an opportunity for the filing of competing applications; and, if competing applications were filed a hearing would be held to determine which applications should be granted. The Balanced Budget Act of 1997 does not create any need for the Commission to change this procedure. It can still allow the filing of AM applications at any time; put those applications on cut off notices; and entertain competing applications. The only difference is that instead of holding a hearing to determine which application should be granted, an auction will have to be held to determine which application should be granted. Birach respectfully submits that such a procedure would be conducive to a more orderly flow of work at the Commission than the "window procedure" adopted in the new rules. Furthermore, it would allow AM stations to be allotted in accordance with free market demand instead of government decree - - itself a worthy objective.

7. If the Commission is determined to go to a window system, however, Birach respectfully submits that the Commission should make it clear that applications for changes in facilities from daytime-only to unlimited time are "minor modifications", not subject to the window proceeding. It has been many, many years since there has been a comparative hearing involving applications for a change in facilities of an AM station from daytime-only to unlimited time. Only a few farsighted entrepreneurs continue to see the full potential of AM radio. Only a few entrepreneurs, such as Birach, are prepared to make the substantial investments required to construct

and operate the expensive directional antenna systems which are required for nighttime operation in the AM band. Thus, it is extremely unlikely that an application to add nighttime facilities to a daytime AM station will attract competing applications. In such unlikely event, however, the remedy is simple: The Commission can simply designate the competing applications for auction.

8. Birach continues to believe that AM radio has a vibrant future. Birach demonstrates that everyday through its successful operation of a number of AM stations. The Commission has previously expressed its desire to revitalize the AM broadcast service. In the Matter of Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd 6273 (1991). Birach respectfully submits that the Commission's revitalization efforts will be best served by (a) continuing to allocate AM broadcast stations on a "demand basis" instead of a government decreed window system; and (b) by classifying as many changes in the facilities of AM stations a "minor" modification as possible. In particular, Birach respectfully requests the Commission to classify changes from daytime-only to unlimited time as "minor modifications", so that Birach's pending application may be promptly received and granted.

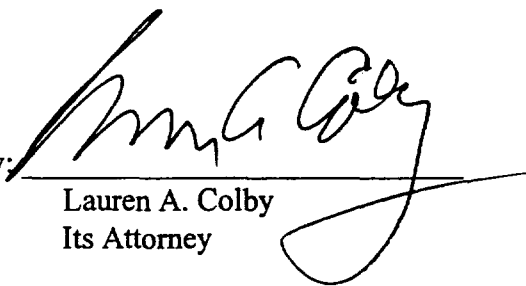
Respectfully submitted,

August 31, 1998

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